

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201600212	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/08/2016 11:00 PM	Location of Incident: Inside of 41B Madison Street	Precinct: 05	18 Mo. SOL 7/8/2017	EO SOL 7/8/2017	
Date/Time CV Reported Sun, 01/10/2016 11:00 AM	CV Reported At: Precinct	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/11/2016 4:25 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Suero	23460	951308	PSA 4
2. POM Jonathan Epps	17769	945694	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Suero	Force: Police Officer Jonathan Suero struck § 87(2)(b) with a radio.	
B.POM Jonathan Epps	Force: Police Officer Jonathan Epps used physical force against § 87(2)(b)	
C.POM Jonathan Suero	Discourtesy: Police Officer Jonathan Suero acted discourteously toward § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On January 10, 2016, § 87(2)(b) filed this complaint with Sgt. Carlos Martinez of PSA 4 via phone on behalf of her son, § 87(2)(b) who is § 87(2)(b). On the same day, Sgt. Martinez filed this complaint with IAB via phone, generating log number 16-1000. The complaint was received at the CCRB on January 11, 2016.

On January 8, 2016, at approximately 11:00 p.m., PO Jonathan Suero of PSA 4 approached § 87(2)(b) inside of the Manhattan Smoke Shop at 41B Madison Street in Manhattan, and PO Suero struck § 87(2)(b)'s right elbow twice with his radio (**Allegation A**). PO Jonathan Epps of PSA 4 approached § 87(2)(b) at that time and used his left hand to allegedly push § 87(2)(b)'s chest twice (**Allegation B**). § 87(2)(b) cried, and PO Suero allegedly video recorded § 87(2)(b) on his cell phone (**Allegation C**). An IAB referral (case 201602183) was created for PO Suero's alleged video recording of § 87(2)(b). The officers left the store, and they did not arrest § 87(2)(b) or issue him a summons (BR 01).

There is video footage of the incident. This footage was recorded by § 87(2)(b) on his cell phone from a security footage monitor inside the Manhattan Smoke Shop at the conclusion of the incident. The relevant 1:18 second portion of the video is embedded below (See also BR 02).

§ 87(2)(b) provided three video clips of the incident, all of which were recorded on his cellphone, and the full length recordings are located in IA 7, IA 8, and IA 9 (BR 03-05).

APU attorney § 87(2)(b) was consulted in regards to this case.



201600212_20160314_1711-DM.mp4

Mediation, Civil and Criminal Histories

§ 87(2)(b) and § 87(2)(b) rejected mediation § 87(2)(b). As of March 3, 2016, neither § 87(2)(b) nor § 87(2)(b) has filed a notice of claim in regards to this incident. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

§ 87(2)(b) and § 87(2)(b) filed one other complaint with the CCRB (case 201601869). This complaint is currently under investigation (BR 15).

PO Suero has been a member of the NYPD for four years and has been the subject of two prior complaints involving two allegations, neither of which was substantiated. § 87(2)(g) PO Epps has been a member of the NYPD for eight years and has been the subject of three prior complaints involving five allegations, none of which were substantiated. § 87(2)(g)

Potential Issues

§ 87(2)(b) did not record all of the video footage from the incident. The full version of the video was subpoenaed from the Manhattan Smoke Shop, but the footage was not obtained because the shop only stored video footage for 24 hours.

The store clerk, § 87(2)(b) on duty during the incident was unavailable to the investigation. Field work was conducted to the incident location to speak with § 87(2)(b) but he was not present. Multiple phone calls were placed to the store to speak with § 87(2)(b)

§ 87(2)(b) and messages were left for him to contact the CCRB, but § 87(2)(b) did not do so.

The video footage showed two possible civilian witnesses to the incident. Field work was conducted to canvass for witnesses, and one of these unidentified witnesses was found. This witness provided a statement off the record, but he refused to provide a verified statement on the record and only agreed provided his first name, § 87(2)(b).

Findings and Recommendations

Allegations not pleaded

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation A – Force: Police Officer Jonathan Suero struck § 87(2)(b) with a radio.

According to § 87(2)(b) he exited his apartment building in the § 87(2)(b) and walked to the Manhattan Smoke Shop at 41B Madison Street (BR 01). § 87(2)(b) noticed that PO Suero and PO Epps followed behind him. § 87(2)(b) entered the store, verbally greeted the store owner, and then walked down the aisle to purchase his desired items. At that time, PO Suero entered the store and made an unintelligible remark. After making this comment, PO Suero struck § 87(2)(b)'s right elbow twice with the butt of his radio by swinging the radio in a forceful upward motion from his waist toward § 87(2)(b)'s right arm.

According to the officers, they observed § 87(2)(b) walk toward the store at a rapid pace and say with a raised voice, “Fuck you. Suck my dick” (BR 13-14). The officers did not know to whom § 87(2)(b) spoke, and they denied that § 87(2)(b) spoke to them. The officers followed § 87(2)(b) to the store because they believed that he intended to start a fight based on his aggressive behavior. PO Suero entered the store first while PO Epps remained outside. PO Epps did not witness what occurred inside the store during this period of a few seconds. PO Suero claimed that § 87(2)(b) said, “Fuck you,” to him as soon as he approached. PO Suero instructed § 87(2)(b) to leave the store at that time. PO Suero denied striking § 87(2)(b) with his radio, and PO Epps did not see PO Suero strike § 87(2)(b) with his radio.

The video footage of the incident shows PO Suero walk up to § 87(2)(b) in the store <00:19> (See embedded video). The video footage shows PO Suero swing his hand twice toward § 87(2)(b)'s right elbow while holding a dark colored object <00:21-00:22 and 00:24-00:25>. § 87(2)(b) identified these motions as the moments that PO Suero struck him with his radio. The video footage does not clearly show whether this object made contact with § 87(2)(b)'s elbow.

Upon viewing the video footage, PO Suero acknowledged that he was the officer who initially approached § 87(2)(b). PO Suero acknowledged that he held his radio in his hand, and he acknowledged that he executed the motions toward § 87(2)(b) depicted in the video. PO Suero denied making contact with § 87(2)(b) while executing these motions and explained that these motions were hand gestures used to indicate that § 87(2)(b) should leave the store.

Officers must use the minimum force necessary to overcome resistance, effect an arrest, or take an emotionally disturbed person into custody. Patrol Guide Procedure 203-11 (BR 08).

§ 87(2)(g)

Allegation B –Force: Police Officer Jonathan Epps used physical force against § 87(2)(b)

According to § 87(2)(b) he cried after PO Suero struck him with his radio. At that time, PO Epps entered the store and approached him. § 87(2)(b) stated that he tried to walk away from the officers at which time PO Epps allegedly pushed him twice, using his left hand to make contact with § 87(2)(b)'s chest.

According to PO Epps, he entered the store and immediately heard § 87(2)(b) say, “Fuck you. My mother said not to talk to the police. I’ll fuck you up.” PO Epps approached § 87(2)(b) because his behavior did not appear to be consistent with that of a person who would be permitted to shop in the store. Both officers stated that § 87(2)(b) removed his jacket, rolled up his sleeves, and clenched his fists while using profanity towards them. Both officers repeatedly instructed § 87(2)(b) to leave the store. During this conversation, PO Epps turned to the store clerk and asked him whether he wanted § 87(2)(b) to leave the store. The clerk initially stated that he did want § 87(2)(b) to leave, but the clerk changed his mind shortly thereafter and told the officers that § 87(2)(b) could stay. PO Epps then exited the store. PO Epps denied pushing § 87(2)(b) and PO Suero denied that PO Epps did so.

The video footage shows PO Epps approach § 87(2)(b) but it does not show PO Epps push § 87(2)(b) <00:32-00:52>. PO Epps viewed the video footage and identified himself as the officer in the black jacket and gray hoodie. § 87(2)(b) stated that he did not record the full length video of the incident, and he stated that PO Epps’ pushes were not recorded.

§ 87(2)(g)

Allegation C- Discourtesy: Police Officer Jonathan Suero acted discourteously toward § 87(2)(b)

§ 87(2)(b) alleged that PO Suero took out his cellphone and video recorded him while he cried. § 87(2)(b) believed that PO Suero recorded him because he held his cellphone toward him in a manner consistent with how one would record a cell phone video. § 87(2)(b)

also saw the video recording light activated on PO Suero's phone, but PO Suero deactivated this light at some point while recording him.

PO Epps did not see PO Suero video record § 87(2)(b) PO Suero denied video recording § 87(2)(b) PO Suero said that he might have held his phone during the incident because his phone was broken and occasionally vibrated randomly in his pocket.

The video footage shows PO Suero hold a dark colored object toward § 87(2)(b) <00:53-01:18>. PO Suero viewed the video footage and acknowledged that this object was his personal cellphone. The video shows PO Suero gesture with his right arm toward § 87(2)(b) while holding his cellphone toward him. <00:59-01:00>. The video shows PO Suero remain in the store after PO Epps exited, and the video shows § 87(2)(b) wipe his face and eyes with his jacket <01:06-01:08>. The video footage shows PO Suero walk out of the store while turning to turning his body to direct his cellphone toward § 87(2)(b) <01:08-01:12>. The video shows § 87(2)(b) s face and body on the screen of PO Suero's cellphone <01:10-01:13>.

PO Suero could not explain his behavior upon viewing the video footage of the incident. PO Suero denied that he video recorded § 87(2)(b) or took pictures of him. PO Suero denied that he possessed any video footage of § 87(2)(b) on his phone. PO Suero repeatedly stated that he "might have" held his phone in his hand because it was vibrating. PO Suero could not account for § 87(2)(b) s appearance in the background of his phone. PO Suero claimed that he turned toward § 87(2)(b) while leaving the store because he though § 87(2)(b) might punch him. PO Epps could not recall this interaction.

Officers must be courteous and respectful in their interactions with the public. Patrol Guide Procedure 203-09 (BR 09).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Squad:

Investigator:

Signature

Print

Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date